



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

WILLIAM A. NELSON,  
Plaintiff,

vs.

DIRECTOR J. OZMINT, of SCDC. et al.,  
Defendants.

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CIVIL ACTION NO. 3:09-3196-HFF-JRM

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court dismiss the Complaint without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 11, 2010, and the Clerk of Court entered Plaintiff's objections to the Report on January 21, 2010. The Court has reviewed the objections, but finds them to be without merit.

Having reviewed the Report, the record, and the relevant law, however, the Court has determined that it will dismiss this action only on the basis that Plaintiff failed to exhaust his administrative remedies. Inasmuch as the Magistrate Judge raised this issue in the Report and Plaintiff has had an opportunity to respond, the Court is satisfied that the mandates of *Anderson v. XYZ Correctional Health Services, Inc.*, 407 F.3d 674, 682-83 (4th Cir. 2005) and *Moore v. Bennett*, 517 F.3d 717, 725 (4th Cir. 2008) have been met. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report to the extent that it does not contradict this Order and incorporates it herein. Therefore, it is the judgment of this Court that the above-captioned case is **DISMISSED** without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

Signed this 23rd day of January, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.